

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

TRC.No. 191 of 2002

AIT.111/1991 of AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL,
ADDL.BENCH, KOZHIKODE.
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REVISION PETITIONER: APPELLANT

M.J.VIJAYAPADMAN, PROPRIETOR,
VIJAYAMANDIRAM ESTATE, KALPETTA NORTH

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENT: RESPONDENT

STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT, THIRUVANANTHAPURAM

BY GOVERNMENT PLEADER SRI.K.B.PARADEEP.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 07/09/2007, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C. No.191 of 2002

Dated this the 7th day of September, 2007.

ORDER

H.L.Dattu, C.J.

The matter arises under the provisions of the Kerala Agricultural Income Tax Act, 1991 (hereinafter referred to as the Act). The assessment year in question is 1979-80.

2. The assessee is a planter in south Waynad. He is having a plantation (Estate) in the name and style of 'Vijayamandiram Estate' as its sole proprietor. The plantation consists of exclusive areas under coffee, rubber, orange etc.

3. For the assessment year 1979-80, the assessee had filed his return of income under the provisions of Agricultural Income Tax Act before the Agricultural Income Tax Officer. In the return so filed, the assessee had shown income from slaughter tapping in a sum of Rs.32,235.50. In support of the claim made, he had produced the registered agreement between the assessee and the purchaser, who had purchased the right for slaughter tapping. Apart from this, he had also claimed certain deductions towards the expenses for the agricultural operation.

4. The assessing authority has completed the assessment under Section 18(3) of the Act. In so far as the income from slaughter tapping, the assessing authority has added a sum of Rs.1,28,954.50 and on that had computed the tax liability under the provisions of the Act. Aggrieved by the additions so made by the assessing

authority, the assessee had carried the matter before the first appellate authority who by his order dated 5-3-1990 has modified the orders passed by the assessing authority and in that has granted certain relief to the assessee.

5. The assessee had carried the matter further by filing second appeal before the Agricultural Income Tax Appellate Tribunal. The Tribunal, by its order dated 17th April, 2001 has rejected the assessee's appeal. That is how the assessee is before us in this tax revision case.

6. The assessee has framed several questions of law for our consideration and decision. At the time of hearing of the revision case, the learned counsel Sri.Dale P.Kurian appearing for the petitioner, confines the revision petition only to the first question of law raised in the revision petition.

The said question of law reads as under:

“Was the Appellate Tribunal correct in law and in the facts and circumstances of the case, in not holding that the agreement for slaughter tapping has been rejected without assigning valid reason and without examining the party and therefore the disallowance of expenses towards slaughter tapping is bad and the deduction originally claimed in the return is allowable?”

7. In the return filed, the assessee has specifically stated that the income from slaughter tapping is only a sum of Rs.32,235.50. The assertion so made sought to be established and justified by producing an agreement said to have been entered by the assessee with the purchaser of tapping rights. The income so reported is not accepted by the assessing authority and therefore, had issued a proposition notice to the assessee, inter

alia, informing him that he intends to add a sum of Rs.1,28,954.50 to the declared income in the return of income for the assessment year 1978-79. The proposal so made has been objected to by the assessee by filing his objections. However, the assessing authority after considering the objection filed by the assessee has rejected the same and has stated in the order as under.

“INCOME FROM SLAUGHTER TAPPING:

Out of 173.40 Acres the trees in 78.31 acres (31 Block) were sold as per agreement dated 26-7-78. Out of the total trees of 10302, 4115 was dead and the remaining 6187 trees are fit for slaughter tapping. Generally in 1st year the yield from slaughter tapping will be 2 to 3 times of the ordinary production. The income was therefore proposed to be estimated as detailed below based on the average yield conceded for the previous year and the differential amount added back.

Average yield in the area as conceded by assessee for 78-79 assessment	390 Kg. (vide working)	
Yield from 6187 trees in the ordinary tapping at the above rate	$\frac{6200 \times 390}{300}$	9,060-00
Income for 8 months (8/78 to 3/79)	$9060 \times 2/3$	5,373-00
2 times for income being slaughter tapping		10,746-00
Income at Rs.10/- per Kg. 16,119x10		<u>1,61,190-00</u>
Income reported		<u>32,235-50</u>

1,28,954-50

Rs.1,28,954-50 will be added back.

The assessee objected to it stating that the trees given for slaughter tapping were so bad that no higher amount can be expected from these trees that 78.31 acres were given for slaughter tapping on contract for a lump sum of Rs.33,500/- and this has been accounted for. I have carefully examined the contention. As per agreement the trees were valued at 69,603.75 at 11.25 per tree. Of this the assessee has accounted for Rs.33,500/- in 79-80 assessment year and the balance in 80-81 and 81-82 respectively. The assessee has accounted for the entire value as income from slaughter tapping. No capital income (value of trees) is accounted for. In the case of income from slaughter tapping the value as per agreement cannot be accepted. The plot was inspected on 23-9-76 and found that most of the trees are budded variety and found healthy at that time. Generally 3 times of average yield would be the income from slaughter tapping considering the weather condition and other aspects in Wynad area 2 times of the average yield only was proposed to be estimated and added back. This cannot be said to be excessive. So I cannot accept the explanation and hence rejected. The proposal to estimate income from slaughter tapping will therefore stand. In the proposal there is mistake in having fixed two times of income for 8 months. The actual income works out to 10,746 Kg against which 16119 is adopted valued to Rs.10/- per Kg. This mistake is made good and the estimation is modified as under. Average yield in the area as conceded by the for 78-79. 390 Kg."

8. Sri. Dale P. Kurian, learned counsel appearing for the assessee would submit, that, the assessing authority, without there being any material, whatsoever, and on mere surmises could not have rejected the agreement that was produced by the assessee, to demonstrate that the income from slaughter tapping that the assessee had received was only Rs.32,235.50. According to the learned counsel, the assessing authority was not justified in rejecting a registered agreement without there being any other evidence.

Therefore, the learned counsel would submit that, the addition so made by the assessing authority requires to be set aside. In the alternative, the learned counsel would submit that the assessee may be given an opportunity to produce some more evidence before the assessing authority justifying the claim made in the return of income in so far as the income received from “slaughter tapping” from rubber trees was only Rs.33,500/-.

9. Sri. Pradeep, learned Government Pleader sought to justify the reasoning and the conclusion reached by the assessing authority.

10. In the instant case, in the return of income filed, the assessee had declared that the total income received by him under the head 'income from slaughter tapping' is only Rs.32,235.50. In support of the said stand, the assessee had produced a registered agreement entered into between the parties. The assessing authority had not rejected the agreement as such in the sense that the assessing authority is not of the opinion that the agreement is either a concocted document or a document prepared only for the purpose of supporting his claim towards the income shown in the return filed for the assessment year 1978-79. Without there being any other material, the assessing authority has merely rejected the agreement entered into between the parties and had proceeded to compute the income of the assessee by estimation. This, in our opinion, is impermissible in law. Therefore, this portion of the orders passed by the assessing authority requires to be set aside and the matter requires to be remitted back to the assessing

authority to re-do the matter afresh, in accordance with law, after affording an opportunity of being heard to the assessee, to justify the income of Rs.32,235.50 reflected in the return of income filed for the assessment year 1978-79. If for any reason the assessee fails to justify the said income, the assessing authority is free to brush aside the agreement that is produced and to proceed to estimate the income, on estimate basis. Accordingly, the following:

ORDER

(i). The Revision Petition is disposed of.

(ii). The orders passed by the assessing authority, in so far as the addition of income towards slaughter tapping in a sum of Rs.1,28,954.50 is set aside.

(iii). The matter is remitted back to the assessing authority to re-do the matter afresh, in accordance with law, after notice to the petitioner only on the afore-said issue.

In view of the order passed in the revision petition, I.A.No.2191 of 2007 is closed.

Ordered accordingly.

**H.L.DATTU,
CHIEF JUSTICE.**

**K.T.SANKARAN,
JUDGE.**

MS

